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COMMITTEE ON THE ELIMINATION
OF RACIAL DISCRIMINATION
Forty-third session

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION

Twelfth periodic reports of States parties due in 1992

Addendum

SPAIN*

[29 March 1993]

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* This report contains the tenth, eleventh and twelfth reports of Spain, which were due on 5 January 1988, 1990 and 1992 respectively, consolidated in a single document.

The eighth and ninth periodic reports submitted by the Government of Spain and the records of meetings of the Committee at which those reports were considered are contained in the following documents:

Eighth periodic report - CERD/C/118/Add.5 and Add.29 (CERD/C/SR.740-741);
Ninth periodic report - CERD/C/149/Add.14 (CERD/C/SR.824).

The reference documentation provided by the Government of Spain may be consulted by members of the Committee in the secretariat's files.

PART I - GENERAL

1. Article 14 of the Spanish Constitution proclaims and guarantees, in conformity with the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the European Convention on Human Rights and other international instruments, that "Spaniards are equal before the law and may not be discriminated against in any way on account of birth, race, sex, religion, opinion or any other condition or personal circumstance".

2. In addition, article 13 (1) of the Constitution stipulates that "Aliens in Spain shall enjoy the public freedoms guaranteed by the present Title, under the terms to be laid down by treaties and the law".

3. In this connection, see the Rights and Freedoms of Aliens in Spain (Organization) Act (No. 7/1985) of 1 July 1985*.

4. Article 165 of the Criminal Code in force categorizes the following as an offence:

> "Any individual responsible for a public service who, on account of the origin, sex, family situation or membership or non-membership of an ethnic group, race, religion, political group or trade union of another person, refuses to perform for that person a service to which he is entitled shall be liable to the penalty of brief imprisonment and a fine of 100,000 to 1 million pesetas.
>
> The same penalties shall be applicable when the acts in question are perpetrated against an association, foundation or society or against its members on account of the origin, sex or family situation of some or all of its members or on account of the membership or non-membership of some or all of its members of a particular ethnic group, nation, race or religion".

Article 181 bis sets a higher penalty in the case of public officials: "Public officials who perpetrate any of the acts provided for in article 165 shall be liable to the same penalty in its highest degree and to the penalty of suspension".

5. In the draft Criminal Code currently being considered by parliament, racial discrimination appears as an aggravating circumstance in offences against persons.

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* May be consulted in the secretariat files.

6. The new Bases of the Juridical Regime (Public Authorities and Common Administrative Procedure) Act (No. 30/1992) of 26 November 1992, pursuant to article 3 of the Spanish Constitution, relating to Spanish linguistic variety, stipulates, in article 36, the language to be used in administrative proceedings:

"1. The language of proceedings conducted by the General Administration of the State shall be Spanish. Notwithstanding this provision, persons concerned who address themselves to the organs of the General Administration of the State established in the territory of an Autonomous Community may also use the language that has joint official status in that Community.

In this case, the proceedings shall be conducted in the language chosen by the person concerned. If a number of persons are involved in the proceedings and there is disagreement on the language to be used, the proceedings shall be conducted in Spanish, although any documents or testimony required by the persons concerned shall be issued in the language chosen by the latter.

2. In proceedings conducted by the authorities of the Autonomous Communities and of local bodies, the language used shall conform to the provisions of the corresponding legislation of the Autonomous Community concerned.

In any case, documents that are to have effect outside the territory of the Autonomous Community and documents addressed to persons concerned who expressly request such a course shall be translated into Spanish.

3. Proceedings or parts of proceedings written in a joint official language other than Spanish shall, when they are intended to have effect outside the territory of the Autonomous Community, be translated into Spanish by the public authority which instituted them".

7. The judicial sphere is governed by the Judicial Authority (Organization) Act (No. 6/1985) of 1 July 1985. Article 231 of this Act reads:

"1. In all judicial activities, judges, magistrates, government procurators, secretaries and other officials of courts and tribunals shall use Spanish, the official language of the State.

2. Judges, magistrates, government procurators, secretaries and other officials of courts and tribunals may also use the official language of the Autonomous Community concerned if none of the parties objects, on the grounds of ignorance of that language, that his defence might thereby be jeopardized.

3. The parties, their representatives and their advisers, witnesses and experts may use the language which also has official status in the Autonomous Community in whose territory the judicial proceedings take place, in both oral and written statements.

4. The judicial proceedings held and the documents presented in the official language of the Autonomous Community shall have full validity and effect, without need for translation into Spanish. They shall be officially translated when they are to have effect beyond the jurisdiction of the judicial organs situated in the Autonomous Community, unless, in the latter case, Autonomous Communities with the same official language are involved, either by order of the judge or on the application of a party who alleges that his defence has been jeopardized.

5. In oral proceedings, the judge or court may accredit as interpreter any person who knows the language used, after he has taken the oath or made the necessary affirmation".

8. Article 3 of the General Prisons Organization Act (No. 1/1979) of 26 September 1979 provides: "Prison activities shall be exercised with due respect, in every case, for the human personality of the prisoners and their legal interests and rights that are not affected by the sentence, without any discrimination on account of race, political opinion, religious belief, status or any other circumstances of a similar nature".

9. A good example of the prohibition of any racial discrimination is the important decision of the Constitutional Court of 11 November 1991*. This decision grants amparo to a woman citizen of Jewish origin who was imprisoned in the Auschwitz extermination camp, where all the members of her family were gassed, vis-à-vis statements made to a periodical by León Degrelle, a former chief of the Waffen S.S.

PART II - INFORMATION ON ARTICLES 1-7 OF THE CONVENTION

10. As to the general juridical structure and relevant information on demographic composition, we append* the introduction written by the Ministry of Justice to the first supplementary report on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; reference to it may, in our opinion, be useful in the present case.

11. As far as this Ministry is concerned, what has been stated in the general part constitutes the information that it is able to provide in connection with the report on article 9 of the International Convention on the Elimination of All Forms of Racial Discrimination. The Ministry of Social Affairs and the Ministry of Education and Science are probably able to report other types of non-legislative activities relating to the commitments entered into.